Office-Supreme Court, U.S.
FILED
JUL 25 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 216

IN RE: ESTATE OF
CORA HUBBARD WILLIAMS

PETITIONER'S REPLY BRIEF

On Petition for Writ of Certiorari to the
Supreme Court of Pennsylvania

PAUL GINSBURG,
Counsel for Petitioner

Carlton House, 550 Grant Street
Pittsburgh 19, Pennsylvania

SMITH BROS. CO. INC., LAW PRINTERS, 434-436 BLVD. OF ALLIES, PITTSBURGH 19, PA.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

NO. 216

IN RE: ESTATE OF
CORA HUBBARD WILLIAMS

PETITIONER'S REPLY BRIEF

The petitioner has been served with a document entitled "Respondents' Brief Sur Petition For Writ Of Certiorari", which presumably was intended to be a brief in opposition to the petitioner's Petition for Writ of Certiorari under paragraph 1 of Rule 24.

Aside from the incorrectness and nonconformity of the legend on the respondents' Brief with the usual and accepted practice in this Honorable Court, it is obvious from its County Court type contents—Counter-Statement of Qusetions Presented, Counter-Statement of the Case, Argument—that their Brief would be employed to have the effect of confusing the actual and clear issues presented to this Honorable Court in the Petition.

It is evident from the Petition that the only relief sought from this Honorable Court is the protection and enforcement of petitioner's right to be heard in advance of judgment as guaranteed by the Constitution and laws of the United States, and particularly by the Due Process Clause of the Fourteenth Amendment.

Even if the respondents had complied with the accepted practice in this Honorable Court through a brief in opposition, they could not have complied with the provisions of paragraph 1 of Rule 24 for their failure to disclose "any matter or ground why the cause should not be reviewed by this Court".

Aside from the fact that the respondents' Brief is wholly without merit and without any legal opposition whatever, it is surprisingly precisely what they have called it. In other words, the Respondents' Brief Sur Petition For Writ Of Certiorari actually is a Brief in support of the Petition. Throughout their Brief they have repeatedly asserted that your petitioner raised all of the constitutional questions complained of herein, including the denials of Due Process of Law, in all of the State and Federal Court proceedings heretofore had, and they thus have supported your petitioner's right to a review in this Honorable Court.

So far as the respondents' Counter-Statement of Questions Presented is concerned, said questions are patently insupportable and untenable, manifesting a complete misapprehension of the considerations governing review on certiorari as set forth in paragraph 1 (a) of Rule 19. Respondents are not permitted to make such a Counter-Statement of Questions Presented, and the petitioner need not and will not make a specific reply thereto. Petitioner's reply, however, to the improper Counter-Statement of the Case and the improper Argument will embrace such a reply. The Counter-Statement of the Case and the Argument are so loaded with incorrect statements, inaccuracies, erroneous conclusions

of fact and of law, impertinencies and other improper insertions, that your petitioner is impelled to reply to most of them.

In the opening sentence of their Counter-Statement of the Case (p. 2), counsel for the respondents have stated "The petitioner, Cora Hubbard Williams, is an incompetent . . .", and have repeatedly referred to her as such throughout the Brief. It is admitted that a fraudulent adjudication of incompetency was made and entered against your petitioner on July 6, 1955, in an *ex parte* hearing wherein she was denied her rights to notice and to be heard in advance of judgment, as well as the right to counsel and opposing witnesses, at which "hearing" not even a guardian *ad litem* was appointed to protect her property rights and individual liberties. On the contrary, however, it is submitted that petitioner is not an incompetent, and the respondents and their attorneys know this. They nevertheless persist in making this mean asseveration at every opportunity, as they did herein. They repeat it in briefs and pleadings, apparently hoping that repeatedly stating it will make it so. In order to add to petitioner's embarrassment, they even have unnecessarily volunteered this defamatory matter to merchants and establishments where she has charge accounts, in connection with their unlawful interferences with petitioner's right of privacy and right to make whatever normal and customary purchases she chooses. They have continually investigated her charge accounts as though they are also guardians of her person instead of only guardians of her Estate.

The knowledge of the respondents and their attorneys that petitioner is not an incompetent, as hereinafter explained, resulted not only from their observations

of her, not requiring medical education or training, but also from their information received from medical experts in psychiatry and neurology. Such information was received by them in connection with Mrs. Williams' Petition for Adjudication of Competency which was about to be heard two years ago, but which was properly discarded when notified by her adversaries that she would have to undergo a re-examination by them which could unlawfully and unconstitutionally trap her into another adverse decision. Thus the concluding paragraph of respondents' Counter-Statement of the Case (pp. 6-7) is a mere sham and is as follows: "At no time has the incompetent, through her present counsel, attempted to follow the provisions of the Incompetents' Estates Act of 1951 by filing a Petition for Adjudication of Competency, although her counsel has never questioned the constitutionality of this Act. This is uncomprehendable in view of the fact that the Orphans' Court of Allegheny County, Pennsylvania, has stated, in the Opinion of the President Judge, that it will entertain at anytime a Petition to have Mrs. Williams adjudicated competent". It does not really mean what it says. Petitioner knows from her prior experience in that Court that it will "entertain" such a petition only on its own detrimental terms and conditions. If petitioner's former counsel was unable to proceed for her with due process of law on such a petition, why would her present counsel attempt to do so? Furthermore, by what authority or right do the adversary attorneys and Court presume to advise petitioner how to proceed when she has already exercised her legal and constitutional election to proceed on the issue of fraud in the procurement of the adjudication of incompetency?

There are many sound legal and equitable bases for your petitioner's proceeding in line with the advice of her own counsel, although "this is uncomprehendable" (p. 7) to counsel for her adversaries. Your petitioner, however, is advised that she need not reply thereto, in view of the innumerable other erroneous conclusions of fact and of law contained in respondents' Brief, which would make such "uncomprehendable" things come as no surprise to a competent. Accordingly, the insupportable and untenable position thus expressed by the respondents, is not incomprehensible to your petitioner.

When the respondents averred (p. 4) that "Since April of 1959, the incompetent has hired numerous reputable attorneys who have represented her for short periods of time", they grossly misrepresented and exaggerated the situation. They know that she could not and has not hired any attorneys, because the respondents have wrongfully seen to it that she is without funds to do so. It is true that Mrs. Williams has consulted with a few reputable attorneys (some with conflicting interests), but the only two of them who have actually represented her are the former counsel who tried in vain to proceed with the Petition for Adjudication of Competency without the above mentioned prejudicial interference, and her present counsel. *Incidentally, when the respondents averred (p. 4) that, "Subsequent to the dismissal of her counsel, who had been President of the Allegheny County Bar Association, the incompetent secured the services of her present counsel . . .", they could have added that her present counsel also had previously been twice elected an Officer of that same Bar Association.*

The knowledge of the respondents and their counsel of expert medical testimony referred to above was contained in letters which were appended as Exhibits to said Petition for Adjudication of Competency and which would have been confirmed at the proposed hearing by the medical experts themselves. The contents of those Exhibits made it quite clear that your petitioner was legally and mentally competent and would not become the victim of designing persons, nor require any guardian of her Estate.

The Exhibits included letters from J. B. Spradley, M. D., 383 West State Street, Trenton 8, New Jersey, "practice limited to neurology and psychiatry", dated November 15, 1960; Robert J. Hudson, M. D., Neuropsychiatrist, 121 University Place, Pittsburgh 13, Pennsylvania, dated July 21, 1961; Raymond L. Rau, M. D., 600 Medical Center Building, 3515 Fifth Avenue, Pittsburgh 13, Pennsylvania, dated July 25, 1961; Murray Lonstein, Ph. D., Clinical Psychologist, 1210 Leslie Road, Green Hill Manor, Pitcairn, Pennsylvania, dated January 2, 1961; and **Robert A. Matthews, M.D., Professor of Psychiatry and Head of the Department of The Jefferson Medical College of Philadelphia, 1025 Walnut Street, Philadelphia, Pennsylvania, dated May 8, 1961. The said Dr. Matthews opened his letter by stating: "As a member of the staff of the Institute of the Pennsylvania Hospital, I was asked to study the case and make an examination of your client, Mrs. Cora Hubbard Williams, for the purpose of evaluating her present mental condition and competency", and concluded it by stating, "In my opnion Mrs. Williams can now be considered as legally competent. The three other psychiatrists, Dr. Spradley, Dr. Hudson and Dr. Rau, who have**

examined the patient in recent months have informed me that they are of the same opinion".

About six months ago the co-guardians testified that the annual income from petitioner's multi-million dollar Estate is substantially in excess of $150,000.00, about half of which income is tax free. They nonetheless disburse to your petitioner a mere $500.00 per month and honor only such charges by her as suit their whim and caprice, deliberately and illegally preventing her from living in accordance with her station in life, the total of such disbursements approximating about ten per cent of her income. These restrictive disbursements to and for the accounts of your petitioner are violative of the provisions of the Incompetents' Estates Act, providing that "all income" can be disbursed to the incompetent without Order of Court.

The petitioner, of course, cannot succeed in opening and vacating the fraudulent adjudication of incompetency if no Court in the United States of America will afford petitioner her right to a hearing thereon. It is respectfully submitted, however, that this Honorable Court will be the first to afford petitioner the protection and enforcement of her right to such a hearing. After hearing, petitioner believes that the adjudication of incompetency will be set aside and vacated. Until such time, her co-guardians have the "legal" authority to protect the principal of her Estate from designing persons; but they have no right whatever thus to "protect" her income. Contrarily, while the co-guardians

impose undue financial restrictions upon petitioner, as aforesaid, they themselves and their attorneys have repeatedly raided her Estate for hundreds of thousands of dollars for excessive and exorbitant commissions and fees, in addition to the disbursements of illegal gifts in excess of $160,000.00 made to petitioner's co-guardian daughter.

A glaring example of the excessive and exorbitant fees and commissions mulcted from petitioner's Estate is recorded in connection with the settlement of the ill founded suit brought by the co-guardians over the sale of Hubbard & Company (p. 3), the circumstances of which have been grossly misrepresented to this Honorable Court by counsel. The respondents have averred (p. 3): "The record clearly shows that, prior to the adjudication of incompetency, Mrs. Williams had become the victim of designing persons. Among other matters, Mrs. Williams was defrauded into the sale of her majority interest in Hubbard and Company, a Pennsylvania Corporation. Subsequent to the adjudication of incompetency, the Co-Guardians instituted suit in this matter and recovered, for the incompetent's estate, the sum of Three Hundred Twenty-five Thousand ($325,000.00) Dollars."

Before going into the said situation concerning exorbitant fees, petitioner denies the Record shows that she had ever become the victim of designing persons prior to the fraudulent adjudication of incompetency; and on the contrary submits that she had become the victim of designing persons only after the said adjudication when she was unable to protect herself and was victimized against her will by the co-guardians of her

Estate and their attorneys (excepting, of course, the Mellon National Bank and Trust Company and their attorneys, who were deceived into appearing at the outset but immediately withdrew after learning of the co-guardian daughter's previously undisclosed plans). *It is absurd to claim that petitioner was defrauded and victimized in connection with the sale of Hubbard & Company, when the Record clearly shows that she exercised prudent and sound judgment in selling her interest therein, and received a fair and adequate price.* Mrs. Williams testified that she was motivated to sell by a drop in annual earnings from over one million dollars to approximately one-half million dollars; the fact that the machinery and equipment, depreciated over a period of more than twenty years, had become so worn out and obsolete that Hubbard & Company became unable to compete and several millions of dollars would be required to restore the company to the profitable position which it formerly enjoyed; and that she could not afford to finance such a program and would not risk borrowing the money to stay in business, stating that she preferred realism to sentiment. *What better reasons could an experienced businessman give for selling out? So far as the selling price is concerned, which exceeded four and one-half million dollars, her own judgment that the price was fair and adequate, was confirmed by The First Boston Corporation, as well as by Mr. Charles A. McClintock, then President of the Colonial Trust Company of Pittsburgh, and a trusted friend and adviser of her late father and herself.*

The above mentioned assertion by the respondents that they "instituted suit in this matter and recovered, for the incompetent's estate, the sum of Three Hundred

Twenty-five Thousand ($325,000.00) Dollars" is another misrepresentation, because that amount was neither a recovery nor a real asset for the alleged incompetent's Estate. Through the said misrepresentation the respondents have wilfully tried to create the mistaken impression that the suit which they instituted was meritorious and that they won it, *when as a matter of fact, they testified that they could not possibly win it for lack of evidence.* In view of all the facts and circumstances surrounding that suit, it is submitted that the compromise of $325,000.00 was the type of settlement usually referred to as a "shakedown". *Although $325,000.00 is a lot of money, it constituted a very small percentage of the wealth of the multi-millionaire defendants in that suit, who preferred to pay that amount rather than be bothered, annoyed and harassed any further by the co-guardians and their attorneys.* Incidentally, prior to the adjudication your petitioner had made it plain that she would not institute such an ill founded, shameful suit, thus giving her designing, unbalanced daughter this additional motive for framing the fraudulent incompetency adjudication so that the said Cora Williams Murdoch could then get into position to give vent to her hatred and envy of the other members of the family through suing them on such anti-social, trumped up charges.

Your petitioner denied that the said "recovery" was made for her Estate because her Estate was not really the beneficiary of it. The real beneficiaries were the co-guardians, their attorneys, the Internal Revenue Service, and numerous "experts" who had testified at hearings to determine whether or not the suit should be brought. At the hearing on allowance of fees, the

co-guardians testified that although they had represented to the Court that the recovery would be tax free damages, they were afterward advised that it must be treated as a long-term capital gain, with the result that twenty-five per cent of the recovery must be paid to the Internal Revenue Service after deductions of $107,500.00 for counsel fees, *et cetera*. *It is respectfully submitted that after the numerous substantial deductions, there was hardly any benefit therefrom to the Estate.* Although the co-guardian and attorneys testified, and President Judge Hugh C. Boyle of the Orphans' Court stated, that they were all aware of the Pennsylvania law to the effect that fees from incompetents' Estates must be on the most modest and moderate scale, nevertheless the attorneys' fees for this one matter were sought in the amount of $112,500.00 and approved in the amount of $107,500.00. This was done in the face of cogent evidence that the suit should never have been brought. Incidentally, it was argued by counsel for your petitioner that as soon as the suit was commenced, the defendants promptly offered about one-half the amount of that recovery to these designing litigants as a "nuisance value" settlement. No legal talent is required in procuring nuisance value settlements against such defendants. It is further submitted, in view of the attorneys' fees in the amount of $107,500.00 for making that compromise, on top of tremendous prior disbursements over the years for attorneys' fees, that petitioner Cora Hubbard Williams readily agrees with the statement of her adversaries in their Conclusion (p. 10), "It is quite clear that attorneys are just as capable of being designing persons as other laymen".

While on the subject of the designing attorneys in this proceeding, petitioner makes the interesting observation that the Philadelphia law firm of Schnader, Harrison, Segal & Lewis filed an Affidavit of Service of a Petition on July 16, 1955, made upon petitioner's daughter, then Cora Maltz Williams of Philadelphia. It is evident therefrom that said law firm of which Frank Murdoch, Esquire, is and then was an associate, knew of this multi-million dollar Estate since its inception, as well as ancillary proceedings in New Jersey. The following year Mr. Britton Murdoch, son of Frank Murdoch, Esquire, married your petitioner's daughter; promptly after which all of the Murdochs moved from a modest apartment in the village of Overbrook to luxurious homes in swank Haverford.

In reply to respondents' reference (p. 2) to petitioner's incarceration at Trenton, New Jersey; *it is submitted that the public tax supported Trenton State Hospital for the Insane is no place for a multi-millionaire.* This should have been particularly obvious to the Chief of Police of Mantoloking, New Jersey, where petitioner's summer home was located. Although the respondents claim that the confinement was accomplished through the Petition of the Chief of Police, petitioner can establish that his Petition actually was made pursuant to the plan and at the instigation of petitioner's daughter. The daughter's assertion (p. 2), that she petitioned for appointment of guardians "on the advice of counsel and the doctors attending her mother", is entirely untrue. Contrarily, it was her counsel and doctors who unwittingly combined with the daughter to accomplish the adjudication, pursuant to her nefarious scheme.

In this connection, the Court should consider the fact that petitioner's daughter (who had been given all advantages by her mother) saw to it that her mother was brutally incarcerated, first in said public institution, where she never visited her mother; then had her continuously restrained and confined under unnecessary and excessive drugs and sedation for about four years; then opposed and frustrated every application and suit by her mother for obtaining legal and equitable relief (while at the same time pretending to be acting in the best interests of her mother as required by law), well knowing of her mother's undue humiliating distress, and the lack of funds with which to maintain her station in life. *What sort of diagnosis would independent psychiatrists make of petitioner's daughter?* Is such a person normal and sane? Would the daughter pass the same tests of legal competency which her mother did two years ago, according to the above mentioned diagnoses of prominent psychiatrists? Has not the misbehavior of petitioner's wayward daughter given support to the old saying, that those who make charges of mental incapacity against others are usually the ones who themselves lack mental capacity?

Even if petitioner's daughter sincerely believed that her mother should have been confined and restrained for four years instead of one month as advised, would not your petitioner deserve better treatment and care than she received? Should not petitioner's daughter at least have allowed her mother to use and enjoy all the net income from her own Estate? Have not the adversary actions and activities of petitioner's daughter exhibited the worst sort of hatred and bitterness? *Is not peti-*

tioner's daughter the one who is under the sickening influence of designing persons?

Again the respondents have made a gross misrepresentation to this Honorable Court, and one need only read it to know that it is untrue. They have represented (p. 4) that your petitioner in the year immediately preceding the fraudulent adjudication "spent almost One Million ($1,000,000.00) Dollars in acquiring non-income producing assets which included, inter alia, 21 houses in the New Jersey resort area, which real estate has been liquidated by the Co-Guardians at a substantially lower price than that paid by the incompetent". In the first place, those twenty-one houses in the New Jersey resort area would obviously be good income producing properties; and in the second place, the cost of those properties was slightly in excess of only one-half million dollars.

The said statement by the respondents (p. 4) that they liquidated the twenty-one houses in the New Jersey resort area "at a substantially lower price than that paid by the incompetent" discloses part of the daughter's original scheme. All of those properties were purchased by your petitioner at the then prevailing market price or less; but the timing of those purchases afforded the daughter respondent a maneuver by which she could liquidate the properties at sacrifice prices to help establish the fraudulent adjudication and at the same time "take care of" some of those who were acting in combination and concert with her. Sacrificing those properties displayed poor judgment, because currently they have a value of about twenty-five per cent over and above the

prices which your petitioner paid for them. To refer to those houses as "non-income producing assets" is absurd beyond belief, unless untenably claiming that they were purchased to remain empty. Anyone familiar with that area is quite aware of the extremely high rentals paid, particularly in season and even all year round. *A reliable and independent appraiser of those assets would estimate a high yield on the capital invested.*

So far as the maneuver thus made available to petitioner's daughter is concerned, the acquisition and disposition of one of those properties manifests an interesting situation. Your petitioner acquired one of those properties at the request of Harrison T. Barrow, Esquire, who wanted to lease the first floor for his law office. Petitioner, however, would not claim that Attorney Barrow was a designing person for inducing her to make that purchase because he was willing to pay a fair rental. What transpired in the liquidation of that property (with the others) shows how petitioner's daughter acquired witnesses. When that property was "liquidated by the Co-Guardians at a substantially lower price than that paid by the incompetent", it was then purchased by the same "Harrison T. Barrow, Esquire, an attorney, who testified at the hearing before the Orphans' Court of Allegheny County, held on July 6, 1955, that he personally served the incompetent with the said notice of hearing" (p. 2). Mrs. Williams has repeatedly denied that she was ever served with a notice of hearing, and expects to be able to prove that.

It is incredible that these incompetent respondents would presume to aver (p. 4) that the jewelry purchased by your petitioner was at highly inflated prices and that

petitioner had thus become the victim of designing persons, when they know that the purchases were made from Harry Winston of New York City. Mr. Winston is perhaps the most prominent and reputable jeweler, catering to the wealthy; is far too busy and successful to victimize his customers; and certainly could not afford to do so at the risk of his great reputation. As a matter of fact, the jewelry which your petitioner purchased directly from Mr. Winston himself, although expensive, was the sort of jewelry one would expect a woman of your petitioner's wealth to possess and the prices thereof were not at all inflated.

The respondents' references to the litigation against them in the local Courts simply supports the petitioner's contention that they have been wrongfully interfering with all of her attempts to secure a hearing and to make direct and collateral attacks upon the fraudulent adjudication. Their charge, however, that "the incompetent's desire for publicity is satiated by her counsel securing newspaper coverage" (pp. 4-5) is quite as puerile as it is incorrect. The respondents and their counsel well know that this litigation has been highly publicized ever since its inception over eight years ago. It is common knowledge that any such litigation involving people of prominence and wealth, as well as newsworthy issues, always receives extensive "newspaper coverage". Respondents' invidious implications based upon such impertinent matter is indeed in poor taste and, in view of the fact that present counsel for petitioner entered his appearance a little more than one year ago, has no factual basis whatever.

The respondents' reference to the presentation and disposition of Mrs. Williams' Petition in the Orphans' Court (p. 5) is misleading, untrue and scandalous. *That Petition was not disposed of "on its merits" and could not have been, because the Court dismissed it without the required answer thereto and in advance of a hearing thereon.* Furthermore, the affidavit of Mrs. Williams appended thereto was properly and legally verified and reverified; and also the said verfication at any rate was mere surplusage.

The Exceptions to said Orphans' Court Decree were withdrawn with prejudice after it became clear that your petitioner could not under any circumstances obtain a hearing in that Court on the issue of the fraud and misconduct of her adversaries. Under such circumstances, going through the routine of Exceptions would merely be wasted motion. There is no legal significance to petitioner's voluntary withdrawal with prejudice, but judging by the respondents' repeatedly emphasizing this pointless point, they must feel that this Honorable Court will not be convinced.

In referring to the Petition which was dismissed by the Supreme Court of Pennsylvania on August 29, 1962 (p. 5), the respondents did not presume again to misrepresent that it was dismissed on the merits, when it was not. When they, however, asserted that your petitioner "has never filed any appeals or Petitions for Writs of Certiorari to the Decrees of the Supreme Court of Pennsylvania or of the Orphans' Court of Allegheny County, Pennsylvania", *they have overlooked or misapprehended the point that such petitions for writ of*

certiorari are not allotcable to the Orphans' Court and were not required to the Supreme Court of Pennsylvania prior to the instant one; and their intimation that such certiorari is a prerequisite to petitioner's suit in the District Court (p. 5) shows the incorrectness of their position on the doctrine of exhaustion of State remedies.

In their reference to counsel's "three (3) suits in the County Court of Allegheny County Pennsylvania, against the Co-Guardians of Mrs. Williams' Estate", counsel for your petitioner is quite astonished that the respondents' attorneys would misrepresent that these suits were "for contracts entered into by counsel purportedly on behalf of Mrs. Williams which the Co-Guardians refused to honor. This was another attempt by counsel to collaterally attack the guardianship". It is plain from the Complaints filed in those suits that they are based upon the doctrine of detrimental reliance. The co-guardians had falsely represented to petitioner's counsel that they would pay all of her bills, at the same time making it plain that they would not pay her counsel fees (although obligated under the law to do so). Accordingly and in reliance thereon, counsel guaranteed Mrs. Williams' account with a secretarial service which makes reasonable charges for preparation and typing of the various pleadings and briefs, *et cetera*, which are necessary in connection with seeking the protection and enforcement of her legal and equitable rights. When the co-guardians refused to honor these necessary and legal charges in violation of their aforesaid representations, counsel had no legal alternative but to bring suit. Each time that the charges guaranteed by counsel approxi-

mated $500.00, he would pay them pursuant to his guarantee and then bring suit against the co-guardian Commonwealth Bank and Trust Company, each time meeting vigorous opposition through untenable Preliminary Objections. The total amount currently sued for approximates $1,400.00; and it soon will be augmented in a required fourth suit. One would think that the respondents should prefer to conceal rather than disclose such litigation, which makes it evident that their promises cannot be relied upon even in such picayune respects. Their conclusion, however, that "This was another attempt by counsel to collaterally attack the guardianship" (p. 6) manifests the poor judgment which they exercise in jumping to conclusions.

The judgment sought to be reviewed herein is the Order of the Supreme Court of Pennsylvania dated March 21, 1963, denying the Petition for Change of Venue filed on March 14, 1963. Although the respondents had been served with Notice (App. 1) that the Petition for Change of Venue would be presented on March 19, 1963, and that their answer thereto, if any, should be filed prior to the said presentation according to the accepted practice in that Court, *no answer was timely filed by them*. Instead, on March 15, 1963, the respondents filed a Motion to Quash which was subsequently denied upon consideration of petitioner's Answer to the Motion to Quash filed on March 18, 1963. For failure of the respondents to appear on March 19, 1963, the Supreme Court of Pennsylvania permitted counsel for petitioner to proceed with oral argument; and nevertheless denied said Petition on March 21, 1963. It was not until April 2, 1963, that the

respondents for some inexplicable reason filed their supposed answer to the Petition, as is evident from the Affidavit appended thereto dated April 2, 1963. It is respectfully submitted that such an untimely answer in violation of the usual and accepted practice, and which could not possibly serve any useful legal purpose, should not have been received for filing; and certainly should not have been certified by the Prothonotary of the Supreme Court of Pennsylvania for filing in this Court. It is this "Answer" which the respondents have referred to in their discussion (p. 6) of the Petition for Change of Venue, as though it were properly filed and timely, with the false impression that the dismissal by the Pennsylvania Supreme Court was based upon consideration of the Petition and Answer. Because the immaterial, irrelevant, false and scandalous matters contained in said answer were not considered by the Supreme Court of Pennsylvania, they are not entitled to consideration by this Honorable Court. That is why your petitioner properly submitted for filing herein a certified copy only of the Petition for Change of Venue and the Order entered thereon. Under all the foregoing circumstances, a motion to strike the improperly certified "answer" from the Record in this Honorable Court should be granted; but your petitioner will not unduly burden this Honorable Court with such a motion. *Petitioner does, however, respectfully submit that upon being apprised of the foregoing circumstances and facts, this Honorable Court will treat that document as though it were stricken by refusing to examine it and give any consideration whatever to its contents.*

The Fantastic Arguments of Respondents Can Be Disposed of Readily.

1. The Doctrine of Lis Pendens Cannot Legally Be Invoked.

The respondents' attempt to invoke the doctrine of *lis pendens* cannot possibly receive favorable consideration because (a) the instant proceeding is necessarily, but not actually, a friendly proceeding pursuant to a State Statute, while the Federal Court proceeding is definitely adversary; (b) there is no identity of parties in the two proceedings, because there are no parties to the instant proceeding; (c) without replying to the respondents' incorrect description of the Federal Court proceeding (and their misstatement of the matter on Appeal), suffice it to say that it was brought pursuant to Section 1331 of the Judicial Code and thus the identity of the thing sued for is necessarily different from the object of the instant proceeding; and (d) the basic and underlying issue in the instant proceeding could not possibly be raised in the Federal Court, which has no jurisdiction over proceedings pursuant to the Pennsylvania Incompetents' Estates Act. Furthermore, it is inconceivable that the doctrine of *lis pendens* would be invoked in a State Court proceeding by reason of litigation pending in a Federal Court.

2. The Instant Proceeding Is Always Pending in the Orphans' Court Until Terminated.

The respondents' Argument that there is no litigation pending in the Orphans' Court is unsupported and insupportable. Their impertinent opening of that Argument (p. 8) again misrepresented what was before the

Supreme Court of Pennsylvania on consideration of the Petition for Change of Venue, "alleging facts that were denied by the Co-Guardians". *It is untrue that any of the facts alleged by petitioner were denied by the co-guardians, who had failed to file an answer.* The respondents then continued that Argument by falsely submitting that "the Supreme Court of Pennsylvania acting on the Answer and the Motion to Quash filed by the Co-Guardians did not find sufficient reasons to grant the Change of Venue" (pp. 8-9); which falsity is evident from the facts that no answer had been filed and the Motion to Quash had not been granted, being subsequently denied. *These incredible asseverations, repeatedly and recklessly made by the respondents and their counsel, should be quite enlightening to this Honorable Court as to why your petitioner has been so unduly burdened with the many problems they have inflicted upon her.* It is true that "At the time she presented this Petition there was no litigation then being considered by the Orphans' Court of Allegheny County nor were there any Petitions filed by the incompetent then pending or now pending before said Court" (p. 8); but it is respectfully submitted that had there been any such matters pending in the Orphans' Court, this matter would not have been ripe for presentation to the Supreme Court of Pennsylvania, and that conversely it is required that no such matters be pending in the Orphans' Court, as a requisite to consideration by the Supreme Court of Pennsylvania. Have not the learned attorneys for the respondents, in making such an absurd argument, overlooked or misapprehended the point that the converse of their argument is the acceptable one, with the result that their argument must be disregarded?

3. "The Incompetent Petitioner Filed in June of 1962 a Petition in the Orphans' Court of Allegheny County That the Original Appointment of the Guardians Was a Denial of Due Process and Other Constitutional Rights of the Incompetent as Well as the Allegations That the Appointment Was Procured by Fraud."

In the opening of this Argument (p. 9), *the respondents in referring to the prior proceedings below, again misrepresented that the Orphans' Court had dismissed the Petition on its merits.* After referring to the prior Pennsylvania Supreme Court proceeding (p. 10), they averred, "The incompetent and her present counsel never filed any direct appeals to the Supreme Court of the United States or petitioned for Writ of Certiorari. It is obvious, therefore, that the present Petition for Writ of Certiorari has assigned as reasons for the allowance of the Writ the denial of these same previous two Petitions which never had been appealed to this Court", actually asserting good grounds for convincing this Honorable Court how untenable and insupportable are their propositions. *What could have been the basis of any direct appeals to this Honorable Court? There certainly was no requirement for having proceeded then with a petition for writ of certiorari in this Honorable Court.*

The Tenor of Respondents' Brief Is Bad.

The attorneys for the respondents have made as vicious a presentation of their opposition as is conceivable. Not once did they refer to your petitioner as Mrs. Williams; but repeatedly, pointedly and unnecessarily have referred to her as "the incompetent". Their ungentlemanly attitude herein reflects their prior attitudes in the lower Courts, treating her as though she were not a citizen and begrudging her the picayune disbursements from her own Estate as though it had already been confiscated by them and their clients.

The Respondents' Brief Exhibits a Lack of Respect for This Honorable Court.

By presenting the unauthorized Brief which they did, instead of a brief in opposition pursuant to the Rules of this Honorable Court, the respondents' attorneys have evidenced their lack of respect because their Brief has so distorted the facts material to the consideration of the Questions Presented, and so confused the Reasons Relied on for the Allowance of the Writ, that your petitioner has been obliged to make a rather extensive Reply, most of which should have been obviated with a proper brief in opposition.

The unwarranted attacks repeatedly made upon your petitioner's "present counsel" for doing all possible to obtain the protection and enforcement of her legal and constitutional rights under the most adverse circumstances, are readily ignored; but the disrespect and lack of consideration for this Honorable Court and the rights of petitioner, should quickly be declared as reprehensible.

The Petitioner Asks Very Little of the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States.

Mrs. Cora Hubbard Williams has been seeking the right to be heard on the issue of the fraud and misconduct of her adversaries in having procured an adjudication of incompetency against her. The lower Courts have stubbornly refused to afford her this right to be heard (a right which they have not given her and cannot take away). Because the Orphans' Court of Allegheny County, Pennsylvania, summarily refused her this right, guaranteed under the Constitution and laws of the United States, and the Supreme Court of Pennsylvania refused to compel said lower Court to do so, your petitioner then sought a change of venue.

Through her Petition for Change of Venue, an original proceeding in the Pennsylvania Supreme Court, petitioner again sought the right to be heard in an unbiased lower Court, which also was denied.

The only question thus before this Honorable Court of last resort is whether or not it will afford her the protection and enforcement of her rights under the Constitution and laws of the United States.

This entire proceeding is actually that simple.

Respectfully submitted,

PAUL GINSBURG,
Counsel for Petitioner

Carlton House, 550 Grant Street
Pittsburgh, Pennsylvania 15219